

REMARKS

Claims 28-33, 35-36, 44 and 46-48 are pending. Claims 1-27, and 49-58 are withdrawn. Claims 34,37-43,45, have been canceled. New claim 58 has been added.

Support for the convex/concave amendment to claim 28 is found in the as-filed specification at page 14, lines 26-30. See also FIG. 5B.

Support for new claim 58 is found in as-filed claim 28, plus the “bottom half” embodiment described in the as-filed specification at page 15, lines 18-22. See also FIG. 5C.

Claims 37, 40 and 41 stand rejected under 35 USC 112, first paragraph as failing to meet the written description requirement. The Examiner takes the position that due to a previous amendment to claim 28, these claims are directed to an undisclosed embodiment.

Applicants respectfully disagree with the examiner’s position, as Applicants elected species IV (FIGS. 5A-5D) for prosecution on the merits. Figure 5A discloses the male/female rivet while FIGS. 5B and 5D disclose the convex/concave features.

Nonetheless, while not necessarily agreeing with the Examiner’s position, Applicants have canceled these claims, and so the rejection should be withdrawn as moot.

Claims 28-33,35-41 and 46-48 stand rejected under 35 USC 112, second paragraph as being indefinite. The Examiner takes the position that in claim 28, the phrases “the first transverse throughhole” and “the second transverse throughhole” lack antecedent basis.

Applicants have amended claim 28 in order to introduce “the first transverse throughhole” and “ the second transverse throughhole” earlier in the claim.

Claim 44 stands rejected under 35 USC 102 as being anticipated by US Patent No. 3,805,443 (Duncan).

Claim 44 has been amended so that the extensions have an inner surface having a convex contour and an outer surface having a concave contour.

Duncan does not describe a device whose extensions have an inner surface having a convex contour and an outer surface having a concave contour. Rather, both the inner and outer surfaces of the extensions of the Duncan device are convex.

The advantage of the convex/concave embodiment is described in the as-filed specification at page 14, lines 26-30:

In some embodiments, the extensions have an inner surface 144 having a convex contour and an outer surface 140 having a concave contour. As shown in FIG. 5b, this convex contour is preferably adapted to match the contour of the spinous process. This contour should minimize wear of and stress upon the extension. The concave contour is preferably adapted to match the erector spinae portion of the low back musculature.

For this reason, the rejection should be withdrawn.

Claims 28-33,35-36, 38-39, 46 and 47 stand rejected under 35 USC 103 as being unpatentable over US Patent No. 3,805,443 (Duncan) in view of US Patent No. 1, 985,032 (“Hoult”).

These claims have been amended so that the extensions have an inner surface 144 having a convex contour and an outer surface 140 having a concave contour.

The advantage of the convex/concave embodiment is described in the as-filed specification at page 14, lines 26-30:

In some embodiments, the extensions have an inner surface 144 having a convex contour and an outer surface 140 having a concave contour. As shown in FIG. 5b, this convex contour is preferably adapted to match the contour of the spinous process. This contour should minimize wear of and stress upon the extension. The concave contour is preferably adapted to match the erector spinae portion of the low back musculature.

Duncan does not describe a device whose extensions have an inner surface having a convex contour and an outer surface having a concave contour. Rather, both the inner and outer surfaces of the extensions of the Duncan device are convex.

Hoult does not cure the deficiencies of Duncan. Hoult has been cited solely for its male/female rivet and so does not cure the deficiencies of Duncan.

For these reasons, the rejection should be withdrawn.

New claim 58 (and claim 47) is advantageous over the cited art in that it requires that the rivet be located in the bottom half of the extensions. The advantage of the “bottom half” embodiment is described in the as-filed specification at page 15, lines 18-22:

In some embodiments, as shown in FIG. 5d, the rivet is located about in the center of the extension. In other embodiments, as shown in FIG. 5c, the rivet 149 is located in the bottom half of the extension. It is believed that locating the rivet in the bottom half of the extensions desirably provides a good match fit with the bony contours of the vertebral body.

In the **Dec. 31, 2008 Office Communication**, the Examiner took the position that new claim 59 of the October amendment was not discussed in view of the state of the art disclosed by the references cited and used in previous rejections.

Applicants respectfully traverse. First, there is no claim 59. Second, if the Examiner was referring to new claim 58, then Applicants submit that the paragraph of the October amendment discussing claim 58 (reproduced verbatim above) does so in view of the state of the art disclosed by the references cited and used in previous rejections. Neither Duncan nor Hoult discloses that the rivet be located in the lower half of the extensions, as required in claim 58. The advantage of the “lower half” embodiment is described above.

In addition, please provide any additional extensions of time which may be necessary and charge any fees which may be due to Deposit Account No. 10-0750, but do not include any payment of issue fees.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,

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